

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE: Fosamax Products Liability :
Litigation :
: 1:07-cv-3295 (JFK)
: Order

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This Document Relates to: :
:
Bogard et al. v. Merck & Co., Inc. :
1:07-cv-3295 (JFK) :
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JOHN F. KEENAN, United States District Judge:

Defendant Merck & Co., Inc. ("Merck") moves pursuant to Federal Rules of Civil Procedure 16(f), 37(b)(2)(c), and 41(b) to dismiss the above-captioned case with prejudice because of plaintiff Jennifer Bogard's ("Plaintiff") failure to provide a Plaintiff Profile Form ("PPF") as required by Case Management Order No. 3 ("CMO 3"). Plaintiff has not opposed the motion. For the reasons provided below, the motion is GRANTED.

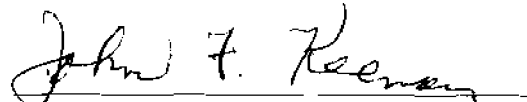
Section 10.3 of CMO 3 requires plaintiffs in all cases consolidated in this multi-district litigation to submit completed PPFs to defense counsel within sixty (60) days from the date that the plaintiff's case is directly filed with this Court or, for cases transferred to this Court, the date that the conditional transfer order becomes final. CMO 3 further provides that Merck may send a deficiency letter to a plaintiff who has not submitted a

completed PPF within sixty (60) days and, upon receipt of the deficiency letter, that plaintiff has thirty days (30) to cure the deficiency.

This case was transferred to this Court on April 26, 2007 and Plaintiff failed to submit a PPF within sixty (60) days of that transfer. Merck represents that it sent deficiency letters to Plaintiff on July 10, 2007 and on August 13, 2007 and that Plaintiff still has not provided a PPF. On September 5, 2007 Merck filed and served Plaintiff with the instant motion to dismiss the case with prejudice. Plaintiff has not opposed the motion. Accordingly, the motion is GRANTED and the case is DISMISSED WITH PREJUDICE.

SO ORDERED.

Dated: New York, New York
March 19, 2008


JOHN F. KEENAN
United States District Judge